

City Council Introduction: **Monday**, February 25, 2002
Public Hearing: **Monday**, March 4, 2002, at **1:30 p.m.**

Bill No. 02R-27

FACTSHEET

TITLE: **SPECIAL PERMIT NO. 1953**, requested by Bill Harrison, to allow the sale of alcoholic beverages for consumption off the premises, on property located at 3301 "O" Street.

STAFF RECOMMENDATION: Denial.

ASSOCIATED REQUESTS: None

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 02/06/02
Administrative Action: 02/06/02

RECOMMENDATION: **Denial** (6-1: Carlson, Newman, Bills, Taylor, Steward and Krieser voting 'yes'; Duvall voting 'no'; Hunter and Schwinn absent).

FINDINGS OF FACT:

1. The staff recommendation to deny this special permit request is based upon the "Analysis" as set forth on p.3-5, concluding that being 47' from the R-4 zoning district, this use does not provide the 100' separation to a residential district, and the proposed screening and landscaping are not adequate to mitigate the adverse effects of this use.
2. The applicant's testimony is found on p.6-8. The applicant seeks to install a privacy fence to mitigate the separation distance from residential uses.
3. Testimony in opposition is found on p.7, and the record consists of two letters in opposition (p.20-22).
4. On February 6, 2002, the Planning Commission agreed with the staff recommendation and voted 6-1 to recommend **denial** (Duvall dissenting).

FACTSHEET PREPARED BY: Jean L. Walker

DATE: February 19, 2002

REVIEWED BY: _____

DATE: February 19, 2002

REFERENCE NUMBER: FS\CC\2002\FSSP1953

CITY OF LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S. Special Permit #1953

DATE: January 22, 2002

PROPOSAL A special permit to allow the sale of alcoholic beverages for consumption off the premises.

LAND AREA: Approximately 15,500 square feet

CONCLUSION: Being 47' from the R-4 zoning district, this use does not provide the 100' separation to a residential district, and the proposed screening and landscaping are not adequate to mitigate the adverse effects of this use.

RECOMMENDATION:	Denial
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GENERAL INFORMATION

LEGAL DESCRIPTION: Lots 10 and 11, Block 3, Young's Hyland Park Addition, Lancaster County, Nebraska.

LOCATION: 3301 O Street

OWNER: Ho-Chunk, Inc.

APPLICANT: Bill Harrison
3301 O Street
Lincoln, NE 68510 (402)496-3005

CONTACT: Bill Harrison
3301 O Street
Lincoln, NE 68510 (402)496-3005

EXISTING ZONING: B-1 Local Business District

EXISTING LAND USE: Convenience Store/Service Station

SURROUNDING LAND USE AND ZONING:

North	Commercial	B-1
South	Single-family Residential	R-4
East	Commercial	B-1
West	Woods Park	P

COMPREHENSIVE PLAN SPECIFICATIONS: The Comprehensive Plan designates commercial land use in this area.

ANALYSIS

OVERVIEW:

The site is a former Standard Oil Company service station, and has been converted for use as a convenience store with service station. This request is for a special permit to allow the sale of alcoholic beverages for consumption off the premises.

1. SPECIAL PERMIT REQUIREMENTS PER LINCOLN MUNICIPAL CODE (LMC) 27.63.685:

Alcoholic beverages may be sold for consumption off the premises in the B-1, B-3, H-1, H-2, H-3, H-4, I-1 and I-3 zoning districts upon the approval of a special permit. A special permit for such use may be granted subject to the requirements of the respective districts, all applicable ordinances, and the following conditions, which may be waived by the City Council:

(a) Parking shall be in accordance with LMC Section 27.67.020.

The parking lot on this site is paved, and the number of off-street parking spaces provided is in excess of the amount required by LMC.

(b) The sale of alcoholic beverages for consumption off the premises shall not be permitted without issuance of a permit under LMC Section 27.63.685 of this code.

This application is for a special permit to allow the sale of alcohol for consumption off the premises.

(c) The licensed premises of any building approved for such activity must be located no closer than 100 feet from a day care facility, a residential district or residential use, or, if a lesser distance, must mitigate any adverse effects of the reduction in distance through landscaping, screening, or other methods approved by the Planning Director.

The convenience store is within 47' of the R-4 zoning district adjacent to the south. In an attempt to mitigate any adverse effects, the applicant is proposing additional screening by installing a six-foot tall privacy fence with shrubs beginning where the neighbor's privacy fence ends and extending west to South 33rd Street. The applicant is unable to install a screen entirely on his property along the length of the property line due to the existing fence and trees on the neighbor's property. As a result, only 43% of the screen across the rear property line is located on the applicant's property.

This special permit only regulates the applicant's property, and therefor can only ensure continued maintenance of improvements located there. For this reason, it is imperative that the required screen be located on the site of the use that requires mitigation, and that improvements on surrounding properties not be used as a substitute.

Consistent with previous reviews, the Police Department finds that the screen does not mitigate the effect of this use located within 47' of a residential district and recommends denial.

(d) Any lighting on the property shall be designed and erected in accordance with all applicable lighting regulations and requirements.

No additional lighting associated with this application is indicated.

(e) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.

A drive-through window is not being proposed.

(f) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.

No such devices are proposed with this special permit.

(g) No access door to the business, including loading or unloading doors, shall face any residential district if such doors are within 150 feet of the residential district. This shall not apply to emergency exit doors required by building or safety codes. No door facing a residential district shall be kept open during the operation of the establishment.

The doors face west and north and do not face a residential district.

(h) Vehicular ingress and egress to and from the property shall be designed to avoid, to the fullest extent possible as determined by the City Council, disruption of any residential district. Particular attention shall be given to avoiding designs that encourage use of residential streets for access to the site instead of major streets.

No residential streets are used to access this site.

(i) All other regulatory requirements for liquor sales shall apply, including licensing by the state.

(j) The City Council may consider any of the following as cause to revoke the special permit approved under these regulations:

(1) Revocation or cancellation of the liquor license for the specially permitted premises; or

(2) Repeated violations related to the operation of the permittee's business.

Planning Commission review and City Council approval is required for this use.

2. DEPARTMENT RESPONSES:

POLICE: The Police Department finds that the proposed screen does not mitigate the adverse effects of the proposed use on the adjacent residential district 47' to the south, and is therefore recommending denial.

PUBLIC WORKS: Public works has no objections to this request.

This special permit is less than 100' from a residential district and fails to demonstrate an adequate screen to mitigate the adverse effect of this use on that district. However, if after a public hearing the City Council approves this application, approval should be subject to the following conditions:

CONDITIONS:

1. This approval permits the sale of alcohol for consumption off the premises at the establishment located at 3301 O Street.
2. The site plan shall be revised to show the proposed fence and landscaping on the applicant's property, and in compliance with LMC and the City of Lincoln Design Standards. This revised site plan shall accompany this permit and shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
3. This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
4. Construction plans shall comply with the approved plans.
5. The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.

Prepared by:

Brian Will, AICP
Planner

SPECIAL PERMIT NO. 1953

PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 6, 2002

Members present: Taylor, Carlson, Bills, Steward, Krieser, Duvall and Newman; Hunter and Schwinn absent.

Staff recommendation: Denial

Brian Will of Planning staff submitted a letter in opposition from a property owner directly to the south.

Proponents

1. Bill Harrison, 3301 O Street, of Heritage Express, presented the application. Heritage Express wishes to sell only beer for consumption off the premises. This site is a former Amoco Service Station which has been converted to a convenience store that also dispenses gasoline. The south side of the property faces R-4 zoning. The applicant has proposed a privacy fence 9' from the property line on the west side. There is a row of trees on the east on a 2' easement which was made when the alley was closed. The privacy fence would be 9' from the property line and would run west to east 53' in length. At that point there is a 75' row of trees, at least 25' tall. Behind the row of trees is a 6' privacy fence on the neighbor's property. The property line is elevated 6' from the parking lot to the top of the retaining wall and gradually declines to 4' on the west property line. The proposed fence would be built to match the landscaping of the other privacy fence from the power pole to 9' from the property line. It would be behind the billboard extending all the way to the power pole. The power pole marks the property line.

The parking lot lighting was approved in September 2001. The entrance doors do not face the residential area; there will be no drive-through and thus no noise factors; Public Works has no objections; and the Traffic Department requires the fence 9' from the west property line.

Harrison pointed out that the closest business that sells alcohol is the Gas N Shop on 28th & "O". The back of their building is their property line. 4' from the back of that building is a house to the south. At the 33rd & "O" location, there is more than 60' from the building to the property line and the applicant is more than happy to install the fence. Harrison testified that the applicant will maintain that property line and the cleanliness of it at all times.

Harrison acknowledged that the Lincoln Police Department did recommend denial, but Harrison understands, after speaking with the Police Department, that they recommend denial of anything that does not meet the 100' separation.

In further support, Harrison submitted that "O" Street is well traveled. Many of the applicant's customers have requested that they sell beer. There are 7 coolers in the store with only two of those coolers will be used for six-pack and 12-pack volumes. They will not sell single cans or bottles.

Harrison also pointed out that in September 2001, when they received the building permit, the applicant agreed to close off one of the entry drives and cooperated at that time.

Steward inquired whether the trees are in the easement. Harrison indicated that they are, and further offered that the applicant will maintain those trees and has maintained them since they bought the property. Heritage Express has owned the property since July 2001. Steward inquired whether the applicant was aware of the restrictions on distance when the property was purchased. Harrison stated that they were not.

Opposition

1. Ralph Johnson, 819 No. 33rd, testified in opposition on behalf of the Hartley Neighborhood Association. The separation from residential is 47'—a substantial difference from 95' or 98'. It is the owner's problem that he was not aware of this restriction.

2. Bill Gekas, owner of the land on the corner of 33rd & "N" behind the billboard sign, testified in opposition. There is no fence located there at the present time. There is a small row of bushes. He has owned the house since 1957 and lately he has been picking up trash bottles all over. He is not in favor of having beer there because it will add to the littering.

3. Bruce Sandhorst, 3320 N Street, testified in opposition. The location of the property is unusual in that the premises not only border a public use district but also a residential district. Additional screening and landscaping will not mitigate the adverse effects. Additional landscaping would further reduce the space available for parking. He does not understand why the thought of a fence is going to make everything okay. He can't imagine that a fence will make selling alcohol at that store okay. They should be required to meet the 100' requirement. We don't want to see Woods Park become a place where people can buy package liquor and unpack it and drink it in the park. We already have to deal with Saturday night drinkers that urinate on our property. He can't imagine that we would want to do anything to exacerbate those problems and lessen the quality of the neighborhood. The premises are currently open 24 hours a day. That change has already impacted the residential property in a negative way. Vehicular access to the premises is not adequate and traffic is turning around in his driveway dozens of times a day. The alcohol sales will increase the retail traffic to the convenience store and will increase the number of cars using the residential street and the residential driveway. Trash is also a problem.

4. Carol Gooding, 3351 N Street, testified in opposition. They do get extra traffic from cars turning around to get to this convenience store, and they already have their share of trash on the weekends.

Response by the Applicant

Mr. Harrison understands that trash is always an issue for any kind of retail outlet. He advised that they have 16 different trash cans located on the property for customers to use. There are two trash cans at each one of the six islands; there are four trash cans inside the store; four trash cans outside the door; and a main dumpster on the west side of the building. They clean

the parking lot six times during the day. Trash is removed three times a day. They try to maintain the premises and keep it as clean as possible. They want to be good neighbors. Harrison asked the Commission to remember what it was like before Heritage Express purchased the property—there were abandoned cars on the parking lot with huge piles of used mechanic's parts, rusted rims and tires. He believes the applicant has made the property a better view for the customer and the public. He assured that they would do whatever is needed to help with the trash issue. He wants to make the neighbors happy. He would like to talk with the neighbors and discuss their concerns.

Harrison clarified that there is no entrance from a residential area. They closed off one of their entrances on 33rd to help with the traffic flow. This applicant cannot do anything about the westbound traffic on "O" Street turning in.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

February 6, 2002

Newman moved to deny, seconded by Carlson.

Newman believes that this Commission has been consistent in not allowing any liquor permits for convenience stores within 100' from a residential area. She understands that mistakes have been made in the past, but this is not a condition to endorse those mistakes.

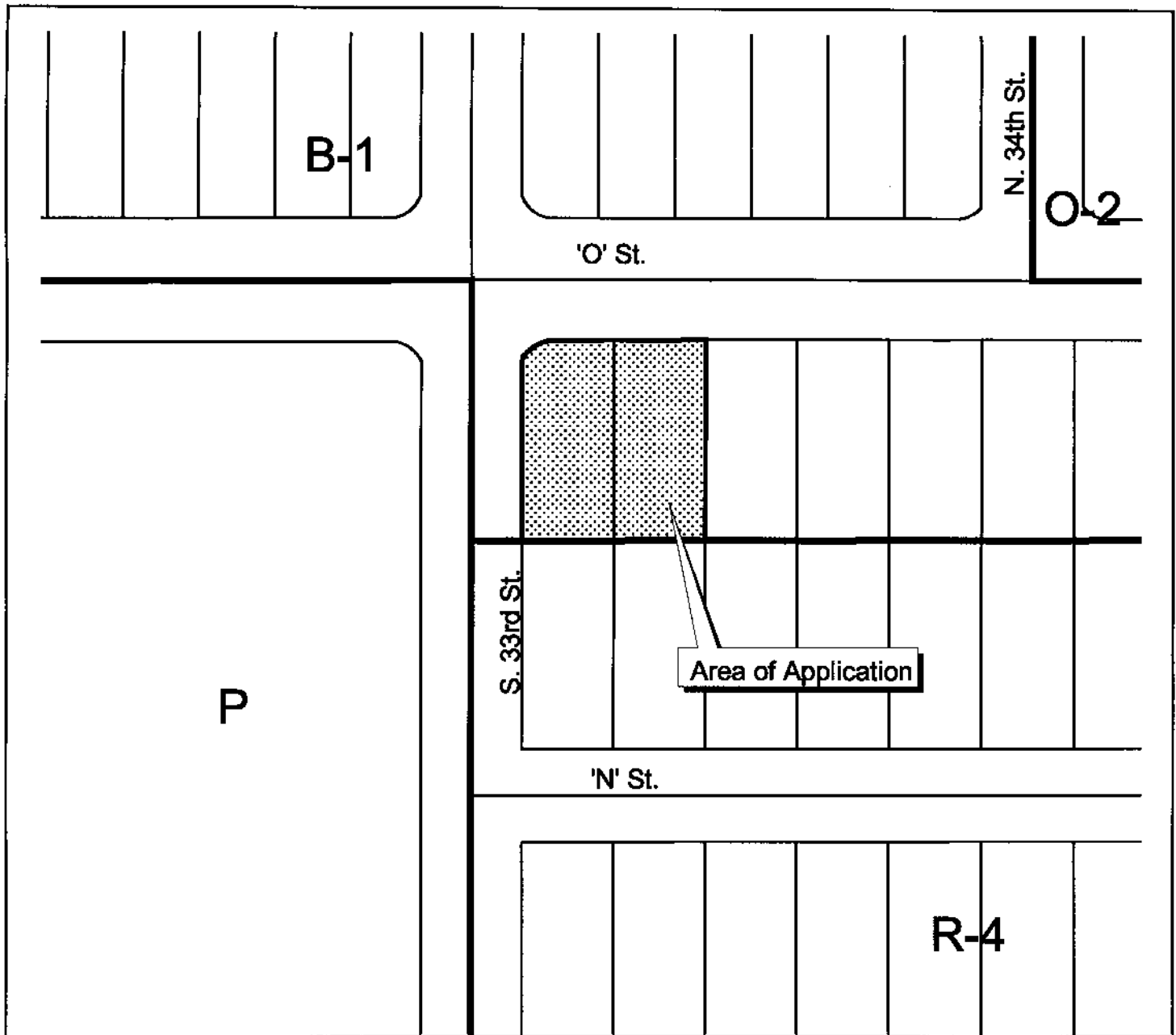
Motion to deny carried 6-1: Carlson, Newman, Bills, Taylor, Steward and Krieser voting 'yes'; Duvall voting 'no'; Hunter and Schwinn absent.



Special Permit #1953
33rd & 'O' St.



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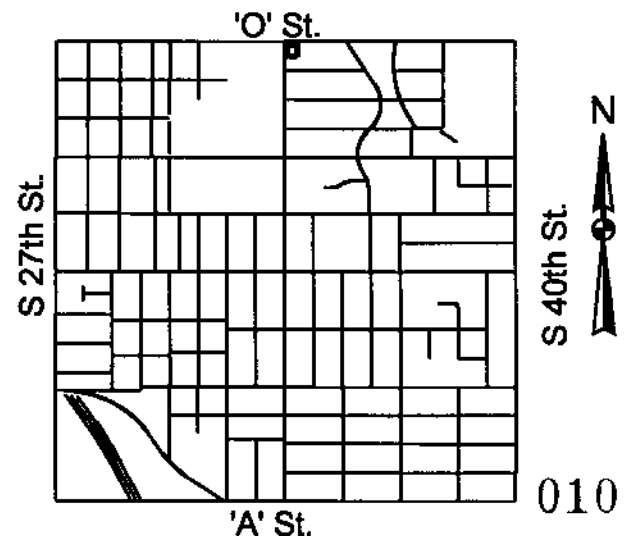
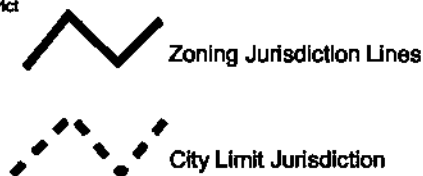


Special Permit #1953 33rd & 'O' St.

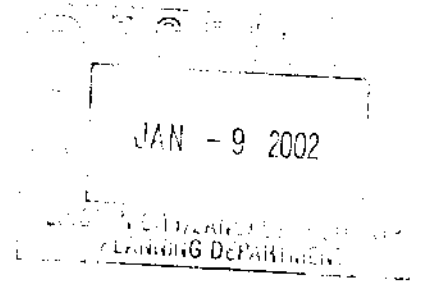
Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
Sec. 30 T10N R7E



Bill Harrison
Heritage Express
3301 "O" Street
Lincoln, NE 68510
Phone # 402-474-9444
Fax # 402-474-9450



Mr. Brian Will
Lincoln/Lancaster County Planning Department
555 S. 10th Street Room #213
Lincoln, Nebraska 68508
Phone # 402-441-7491
Fax # 402-441-6377

January 8, 2002

Mr. Will,

In regards to the application for Liquor Sales Special Permit for Heritage Express. 3301 "O" Street, Lincoln, Nebraska 68510, this will address Section 27.63.685 of the application.

Section (a)

B-1 zoning requires one (1) parking stall per 300 sq. feet of floor area. The outside building measurements are 28 feet by 50 feet. This makes the total sq. feet of the building 1400. This size requires four (4) total stalls. We have five (5) stalls plus one (1) Special needs stall. This exceeds the required number of stalls needed.

* See attached diagrams*

Section (c)

The licensed premises of any building approved for such activity must be located no closer than 100 feet from a day care facility, a residential district or residential use, or, if lesser distance, must mitigate any adverse effects of the effects of the reduction in distance through landscaping, screening, or other methods by the Planning Director.

The area in question is the south side of the property.

There is a retaining wall approximately four (4) feet tall and two (2) feet wide extending across the whole south border. (See Illustration #1)

Two (2) feet south of the retaining wall is the property line.

Directly south of the wall is a row of trees that stand at least 25 feet tall.

(See Illustration #1 & Illustration #3)

Directly to the south of the trees is a six-foot privacy fence.

(See Illustration #1 & Illustration #2)

The privacy fence extends from the east to the power pole. (Approximately 75 feet long)

Directly to the west of the fence and the tree line is a 12-foot tall by 25-foot long billboard.

(See Illustration #2 & #3)

We will install a six (6)-foot privacy fence from the tree line west to nine (9)-feet from the west property line. I spoke with Mr. Scott Opfer at the Lincoln Traffic Engineers office, and he informed me of the distance needed for the clearance for traffic. The fence will be fifty two (52) feet long.

With the tall tree line and the privacy fence covering the whole south property line, this would provide an adequate screening.

Please feel free to contact me with any additional questions or needed information.

Sincerely,

Bill Harrison

VEHICLE STACKING & TRANSPORT DELIVERY PATH

SCALE 1" = 20'-0"

TRANSPORT DELIVERY PATH

3301 "O" STREET

- A. 22'0" L X 6'6" W VEHICLE
- B. 17'6" L X 6'6" W VEHICLE
- C. 48'0" L X 9'0" W TRANSPORT

TRANSPORT ENTRANCE

TRANSPORT EXIT

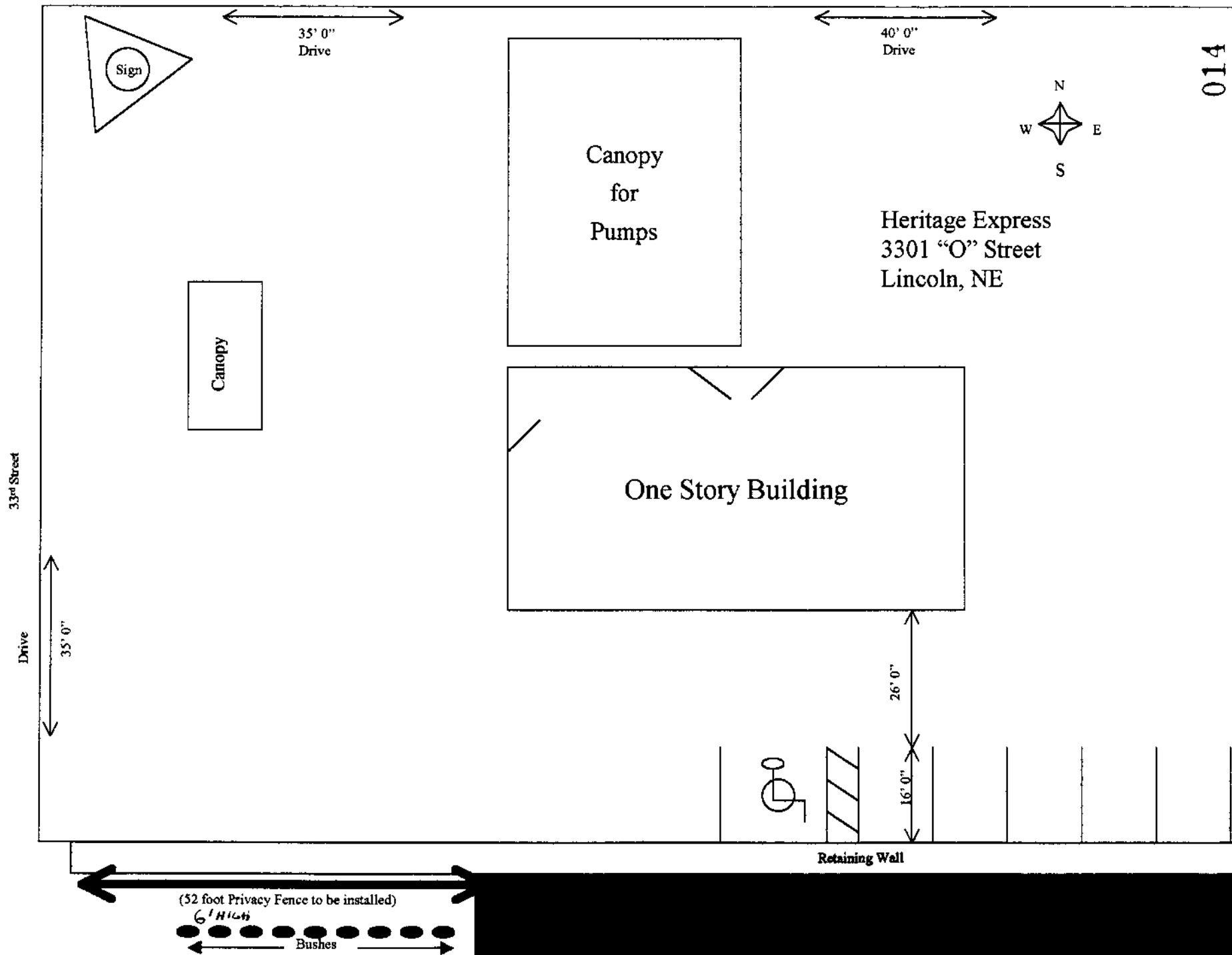




Illustration #1



Illustration #3



Illustration #2

Memorandum



To: Mr. Brian Will
From: Sergeant Michael S. Woolman #737
Date: January 23, 2002
Re: 3301 "O" Street – Liquor Permit

Mr. Will,

I have reviewed the revised Liquor Sales Special Permit for Heritage Express located at 3301 "O" Street. Section 27.63.685 states that the licensed premises of any building approved for such activity must be located no closer than 100 feet from a day care facility, a residential district or residential use, or if a lesser distance, must mitigate any adverse effects of the reduction in distance through landscaping, screening, or other methods approved through the Planning Director. The south side of the building of 3301 "O" Street is 91' from 3300 "N" Street and 87' from 3310 "N" Street. The Lincoln Police Department feels that the proposed bushes and the proposed fence do not adequately mitigate the 100 feet from a residential district-zoning ordinance.

A handwritten signature in black ink, appearing to read "Michael S. Woolman".

Michael S. Woolman

M e m o r a n d u m

To: Brian Will, Planning Department
From: Charles W. Baker, Public Works and Utilities *Butt*
Subject: Special Permit # 1953, Alcohol Sales
Date: December 21, 2001
cc: Roger Figard
Nicole Fleck-Tooze

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the site plan for the proposed Special Permit # 1953 for Alcohol Sales at the gas/convenience store located at 33rd and "O" Street. Public Works has no objections.

IN OPPOSITIONITEM NO. 3.4: SPECIAL PERMIT NO. 1953
(p.147 - Public Hearing - 2/06/02)

February 5, 2002

FEB - 5 2002

Mr. J. Greg Schwinn
Chair, City-County Planning Commission
555 South 10th Street, Suite 213
Lincoln, NE 68508

RE: SPECIAL PERMIT NO. 1953
33rd and "O" Streets

Dear Mr. Schwinn:

The application for Special Permit No. 1953 is NOT in accordance with sound planning practices.

This application is for a permit to sell alcoholic beverages for consumption off the premises located at the southeast corner of "33rd" and "O". The property at that address is currently zoned as a local business district. However, the location is unusual in that the premises not only border a public use district--Woods Park--but also border a residential district.

My home is located at 3310 "N", in the residential district. So, the northern border of my property is the southern border of the premises where the applicant proposes to sell alcoholic beverages. There is no 100-foot setback as specified in the Lincoln Municipal Code. There is not even a 50-foot setback. I understand that the applicant has proposed additional screening and landscaping, but there is no space. And, even if landscaping were added, that would not mitigate the adverse effects. In fact, additional landscaping would further reduce the space available for off-street parking.

The premises at "33rd" and "O" were formerly utilized as a gasoline service station that closed for business in the evenings. The premises are currently utilized by a gasoline and tobacco retailer that is open 24 hours per day. That change in businesses has impacted my property in a substantial and negative way.

First, vehicular access to the premises is not adequate. There is an island, to accommodate a turning lane, in the middle of "33rd", just south of the intersection with "O". So, traffic that was southbound on "33rd" turns onto "N", turns around in my driveway, and then returns to the gasoline and tobacco retailer. That is, not only is a residential street being used to access the retailer, my private property is being used. This occurs dozens of times each day. With the retailer's business hours, this happens around the clock and interferes with the quiet enjoyment of my property. A permit to sell alcoholic beverages would probably increase the business traffic to the retailer. As a consequence, such a permit would probably increase the number of cars using a

Mr. J. Greg Schwinn
February 5, 2002
Page 2

residential street, and my driveway, as a means to access the retailer—even if there were limited hours during which alcoholic beverages could be sold.

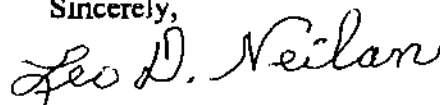
Second, since the change in businesses, there has been a marked increase in the amount of trash discarded on my property. There have even been men using the landscaping in my yard to screen them while they urinate. If alcoholic beverages are available for sale on the premises, one might reasonably expect even more intrusions from those who have already consumed some alcohol and have arrived to purchase more. The situation with people urinating in the bushes of my yard also gravitates against the applicant's proposal for adding even more landscaping. And, these problems point up issues of home security. Making alcoholic beverages available for sale on the premises can only make the situation worse.

Furthermore, the premises are located directly east, across "33rd", from Woods Park. Alcoholic beverages are not allowed in our public parks. So, as a matter of public policy--let alone sound planning practices--it is inappropriate to grant a special permit, to sell alcoholic beverages, for premises so closely situated to an area where no alcoholic beverages are allowed. In this case, I would also suggest that proximity to a public park is analogous to proximity to a day care facility. Our parks are enjoyed largely, if not primarily, by the same children and grandchildren who attend day care. So, the same reasoning that underlies restrictions on the sale of alcoholic beverages near day care facilities should be applicable to the sale of alcoholic beverages near our public parks.

Finally, all of the issues and problems set forth above serve to reduce my property's value—both in terms of resale and taxation. I do not claim a vested right in the value of my property. I do not seek special consideration. But, the special permit requirements of the code are clearly intended to protect landowners facing this type of situation. Please enforce the letter and spirit of those requirements.

Please deny Special Permit No. 1953.

Sincerely,



Leo D. Neilan

JAN 29 2002

LINCOLN CITY/LANCASTER COUNTY
PLANNING DEPARTMENT

January 28, 2002

Lincoln, Lancaster County Planning Department
Ms. Kathleen Sellman, Director
555 South 10th. St., Suite 213
Lincoln, NE 68508

Dear Kathleen:

I am writing in regards to the letter I received for the application for a Special Permit No. 1953, @ 33rd & "O".

I am **strongly against** this application as I live @ 3301 "N" Street. I don't believe alcoholic beverages need to be for sale in the same location where gas is pumped, after all drinking and driving are against the Law. There is a liquor store in the small strip center @ 33rd & "A". Obviously alcohol is a moneymaker and that is why they have applied for this Special Permit.

I have lived in this area for just 5 years. I had previous problems with the kids that hang out at the car wash @ about 33rd & "O" on the north side of the street. With the noise, fights, and general loitering, it took me 4 years to get someone to address the problems. Booming from the cars was so loud it rattled my windows. It took a call to City Councilman, John Camp who finally wrote a letter to the Police Dept., and finally just this last year, it has been quiet. I use to call 2-4 times a week. Selling alcohol @ 33rd & "O" is just asking for more loitering and additional problems in the area.

I am sure if you contact the Police Dept. they can share with you some of the stories that I have heard on what types of citations were issued there. I think it would surprise you.

There is also the issue of the Park... Woods Park is highly utilized by soccer teams, I don't think it is a good idea to have alcohol sales this close to a city park.

I think that Lincoln needs to make a statement to the people that buy and build convenience stores, that alcohol sales will not be permitted within the city limits where gas is sold. That way it will save alot of time and free up some productive time for discussions of topics that affect Lincoln.

With all of the deaths from drunk drivers in the news lately, surely this is a red flag for considering new liquor license applications in convenience stores.

Thank you for your time.

Respectfully,

John Foster